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7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 CARL KILLEBREW,

12 Plaintiff,

13 v.

14 TOPBUILD, INC.; AMERICAN  
NATIONAL INSULATION, INC.;  
15 COAST INSULATION; and DOES 1  
through 10,  
16

Defendants.  
17

Case No. 23-cv-2427-FWS (ASx)

PROTECTIVE ORDER

Honorable Monica R. Almadani

18 **1.**

19 **A. PURPOSES AND LIMITATIONS**

20 Discovery in this action is likely to involve production of confidential,  
21 proprietary, or private information for which special protection from public  
22 disclosure and from use for any purpose other than prosecuting this litigation may  
23 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
24 enter the following Stipulated Protective Order. The parties acknowledge that this  
25 Order does not confer blanket protections on all disclosures or responses to  
26 discovery and that the protection it affords from public disclosure and use extends  
27 only to the limited information or items that are entitled to confidential treatment  
28 under the applicable legal principles. The parties further acknowledge, as set forth

1 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
2 file confidential information under seal; Civil Local Rule 79-5 sets forth the  
3 procedures that must be followed and the standards that will be applied when a  
4 party seeks permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve trade secrets, customer and pricing lists and  
7 other valuable research, development, commercial, financial, technical and/or  
8 proprietary information for which special protection from public disclosure and  
9 from use for any purpose other than prosecution of this action is warranted.  
10 Such confidential and proprietary materials and information consist of, among  
11 other things, confidential business or financial information, information regarding  
12 confidential business practices, information regarding pricing, market surveys, cost  
13 reports, invoices, personnel records, job files, bid documents, customer  
14 information, communications between employees, communications between  
15 employees and third parties, or other confidential research, development, or  
16 commercial information (including information implicating privacy rights of third  
17 parties), information otherwise generally unavailable to the public, or which may be  
18 privileged or otherwise protected from disclosure under state or federal statutes,  
19 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
20 information, to facilitate the prompt resolution of disputes over confidentiality of  
21 discovery materials, to adequately protect information the parties are entitled to  
22 keep confidential, to ensure that the parties are permitted reasonable necessary  
23 uses of such material in preparation for and in the conduct of trial, to address their  
24 handling at the end of the litigation, and serve the ends of justice, a protective order  
25 for such information is justified in this matter. It is the intent of the parties that  
26 information will not be designated as confidential for tactical reasons and that  
27 nothing be so designated without a good faith belief that it has been maintained in a  
28

1 confidential, non-public manner, and there is good cause why it should not be part  
2 of the public record of this case.

3 **2. DEFINITIONS**

4 2.1 Action: Killebrew v. Topbuild, Inc., Case No. 23-cv-2427-FWS-AS.

5 2.2 Challenging party: a Party or Non-Party that challenges the designation  
6 of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
8 how it is generated, stored or maintained) or tangible things that qualify for  
9 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
10 the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
12 support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information or  
14 items that it produces in disclosures or in responses to discovery as  
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless of  
17 the medium or manner in which it is generated, stored, or maintained (including,  
18 among other things, testimony, transcripts, and tangible things), that are produced  
19 or generated in disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter  
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.  
24 House Counsel does not include Outside Counsel of Record or any other outside  
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or  
27 other legal entity not named as a Party to this action.

1           2.10 Outside Counsel of Record: attorneys who are not employees of a party  
2 to this Action but are retained to represent or advise a party to this Action and have  
3 appeared in this Action on behalf of that party or are affiliated with a law firm  
4 which has appeared on behalf of that party, and includes support staff.

5           2.11 Party: any party to this Action, including all of its officers, directors,  
6 employees, consultants, retained experts, and Outside Counsel of Record (and their  
7 support staffs).

8           2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
9 Discovery Material in this Action.

10          2.13 Professional Vendors: persons or entities that provide litigation support  
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
13 and their employees and subcontractors.

14          2.14 Protected Material: any Disclosure or Discovery Material that is  
15 designated as “CONFIDENTIAL.”

16          2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
17 from a Producing Party.

### 18 **3. SCOPE**

19          The protections conferred by this Stipulation and Order cover not only  
20 Protected Material (as defined above), but also (1) any information copied or  
21 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
22 compilations of Protected Material; and (3) any testimony, conversations, or  
23 presentations by Parties or their Counsel that might reveal Protected Material.

24          Any use of Protected Material at trial shall be governed by the orders of the  
25 trial judge. This Order does not govern the use of Protected Material at trial.

### 26 **4. DURATION**

27          Even after final disposition of this litigation, the confidentiality obligations  
28

1 imposed by this Order shall remain in effect until a Designating Party agrees  
2 otherwise in writing or a court order otherwise directs. Final disposition shall be  
3 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
4 with or without prejudice; and (2) final judgment herein after the completion and  
5 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
6 including the time limits for filing any motions or applications for extension of time  
7 pursuant to applicable law.

## 8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.  
10 Each Party or Non-Party that designates information or items for protection under  
11 this Order must take care to limit any such designation to specific material that  
12 qualifies under the appropriate standards. The Designating Party must designate for  
13 protection only those parts of material, documents, items, or oral or written  
14 communications that qualify so that other portions of the material, documents,  
15 items, or communications for which protection is not warranted are not swept  
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations  
18 that are shown to be clearly unjustified or that have been made for an improper  
19 purpose (e.g., to unnecessarily encumber the case development process or to  
20 impose unnecessary expenses and burdens on other parties) may expose the  
21 Designating Party to sanctions. If it comes to a Designating Party's attention that  
22 information or items that it designated for protection do not qualify for protection,  
23 that Designating Party must promptly notify all other Parties that it is withdrawing  
24 the inapplicable designation.

25 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
26 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
27 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
28 under this Order must be clearly so designated before the material is disclosed or

1 produced.

2 Designation in conformity with this order requires:

3 (a) for information in documentary form (e.g., paper or electronic documents,  
4 but excluding transcripts of depositions or other pretrial or trial proceedings), that  
5 the Producing Party affix at a minimum, the legend “CONFIDENTIAL”  
6 (hereinafter “CONFIDENTIAL legend”), to each page that contains protected  
7 material. If only a portion or portions of the material on a page qualifies for  
8 protection, the Producing Party also must clearly identify the protected portion(s)  
9 (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection  
11 need not designate them for protection until after the inspecting Party has indicated  
12 which documents it would like copied and produced. During the inspection and  
13 before the designation, all of the material made available for inspection shall be  
14 deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
15 documents it wants copied and produced, the Producing Party must determine  
16 which documents, or portions thereof, qualify for protection under this Order. Then,  
17 before producing the specified documents, the Producing Party must affix the  
18 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a  
19 portion or portions of the material on a page qualifies for protection, the Producing  
20 Party also must clearly identify the protected portion(s) (e.g., by making  
21 appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identify the  
23 Disclosure or Discovery Material on the record, before the close of the deposition  
24 all protected testimony.

25 (c) for information produced in some form other than documentary and for  
26 any other tangible items, that the Producing Party affix in a prominent place on the  
27 exterior of the container or containers in which the information is stored the legend  
28

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants  
 2 protection, the Producing Party, to the extent practicable, shall identify the  
 3 protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
 5 failure to designate qualified information or items does not, standing alone, waive  
 6 the Designating Party’s right to secure protection under this Order for such  
 7 material. Upon timely correction of a designation, the Receiving Party must make  
 8 reasonable efforts to assure that the material is treated in accordance with the  
 9 provisions of this Order.

## 10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
 12 designation of confidentiality at any time that is consistent with the Court’s  
 13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the informal  
 15 dispute resolution process set forth in the Court’s Procedures and Schedules. see  
 16 <http://www.cacd.uscourts.gov/honorable-alka-sagar>.

17 6.3 The burden of persuasion in any such challenge proceeding shall be on  
 18 the Designating Party. Frivolous challenges, and those made for an improper  
 19 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
 20 parties) may expose the Challenging Party to sanctions. Unless the Designating  
 21 Party has waived or withdrawn the confidentiality designation, all parties shall  
 22 continue to afford the material in question the level of protection to which it is  
 23 entitled under the Producing Party’s designation until the Court rules on the  
 24 challenge.

## 25 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

26 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
 27 disclosed or produced by another Party or by a Non-Party in connection with this  
 28



1 Action only for prosecuting, defending, or attempting to settle this Action. Such  
2 Protected Material may be disclosed only to the categories of persons and under the  
3 conditions described in this Order. When the Action has been terminated, a  
4 Receiving Party must comply with the provisions of section 13 below (FINAL  
5 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
6 Party at a location and in a secure manner that ensures that access is limited to the  
7 persons authorized under this Order.

8 7.2 Disclosure of ‘CONFIDENTIAL’ Information or Items. Unless  
9 otherwise ordered by the court or permitted in writing by the Designating Party, a  
10 Receiving Party may disclose any information or item designated  
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well  
13 as employees of said Outside Counsel of record to whom it is reasonably necessary  
14 to disclose the information for this Action;

15 (b) the officers, directors, and employees (including House Counsel) of the  
16 Receiving Party to whom disclosure is reasonably necessary for this Action;

17 (c) Experts (as defined in this Order) of the Receiving Party to whom  
18 disclosure is reasonably necessary for this Action and who have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (d) the court and its personnel;

21 (e) court reporters and their staff;

22 (f) professional jury or trial consultants, mock jurors, and Professional  
23 Vendors to whom disclosure is reasonably necessary for this Action and who have  
24 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (g) the author or recipient of a document containing the information or a  
26 custodian or other person who otherwise possessed or knew the information;

27 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
28



1 Action to whom disclosure is reasonably necessary provided: (1) the deposing party  
 2 requests that the witness sign the form attached as Exhibit A hereto; and (2) they  
 3 will not be permitted to keep any confidential information unless they sign the  
 4 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise  
 5 agreed by the Designating Party or ordered by the court. Pages of transcribed  
 6 deposition testimony or exhibits to depositions that reveal Protected Material may  
 7 be separately bound by the court reporter and may not be disclosed to anyone  
 8 except as permitted under this Stipulated Protective Order; and

9 (i) any mediator or settlement officer, and their supporting personnel,  
 10 mutually agreed upon by any of the parties engaged in settlement discussions.

11 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
 12 **PRODUCED IN OTHER LITIGATION**

13 If a Party is served with a subpoena or a court order issued in other litigation  
 14 that compels disclosure of any information or items designated in this Action as  
 15 ‘CONFIDENTIAL,’ that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall  
 17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
 19 issue in the other litigation that some or all of the material covered by the subpoena  
 20 or order is subject to this Protective Order. Such notification shall include a copy of  
 21 this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued  
 23 by the Designating Party whose Protected Material may be affected. If the  
 24 Designating Party timely seeks a protective order, the Party served with the  
 25 subpoena or court order shall not produce any information designated in this action  
 26 as “CONFIDENTIAL” before a determination by the court from which the  
 27 subpoena or order issued, unless the Party has obtained the Designating Party’s  
 28 permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions  
2 should be construed as authorizing or encouraging a Receiving Party in this Action  
3 to disobey a lawful directive from another court.

4 **9. NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
5 **PRODUCED IN THIS LITIGATION**

6 (a) The terms of this Order are applicable to information produced by a Non-  
7 Party in this Action and designated as "CONFIDENTIAL." Such information  
8 produced by Non-Parties in connection with this litigation is protected by the  
9 remedies and relief provided by this Order. Nothing in these provisions should be  
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to  
12 produce a Non-Party's confidential information in its possession, and the Party is  
13 subject to an agreement with the Non-Party not to produce the Non-Party's  
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party  
16 that some or all of the information requested is subject to a confidentiality  
17 agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated  
19 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
20 specific description of the information requested; and

21 (3) make the information requested available for inspection by the Non-  
22 Party, if requested.

23 (c) If the Non-Party fails to seek a protective order from this court within 14  
24 days of receiving the notice and accompanying information, the Receiving Party  
25 may produce the Non-Party's confidential information responsive to the discovery  
26 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
27 not produce any information in its possession or control that is subject to the  
28 confidentiality agreement with the Non-Party before a determination by the court.

1 Absent a court order to the contrary, the Non-Party shall bear the burden and  
2 expense of seeking protection in this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
5 Protected Material to any person or in any circumstance not authorized under this  
6 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
7 writing the Designating Party of the unauthorized disclosures, (b) use its best  
8 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
9 person or persons to whom unauthorized disclosures were made of all the terms of  
10 this Order, and (d) request such person or persons to execute the “Acknowledgment  
11 and Agreement to Be Bound” that is attached hereto as Exhibit A.

12 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
13 PROTECTED MATERIAL**

14 When a Producing Party gives notice to Receiving Parties that certain  
15 inadvertently produced material is subject to a claim of privilege or other  
16 protection, the obligations of the Receiving Parties are those set forth in Federal  
17 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
18 whatever procedure may be established in an e-discovery order that provides for  
19 production without prior privilege review. Pursuant to Federal Rule of Evidence  
20 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure  
21 of a communication or information covered by the attorney-client privilege or work  
22 product protection, the parties may incorporate their agreement in the stipulated  
23 protective order submitted to the court.

24 **12. MISCELLANEOUS**

25 12.1 Right to Further Relief. Nothing in this order abridges the right of any  
26 person to seek its modification by the Court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
28 Protective Order no Party waives any right it otherwise would have to object to

1 disclosing or producing any information or item on any ground not addressed in  
2 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
3 any ground to use in evidence of any of the material covered by this Protective  
4 Order.

5 12.3 Filing Protected Material. A Party that seeks to file under seal any  
6 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
7 may only be filed under seal pursuant to a court order authorizing the sealing of the  
8 specific Protected Material at issue. If a Party's request to file Protected Material  
9 under seal is denied by the court, then the Receiving Party may file the information  
10 in the public record unless otherwise instructed by the court.

### 11 **13. FINAL DISPOSITION**

12 After the final disposition of this Action, as defined in paragraph 4, within 60  
13 days of a written request by the Designating Party, each Receiving Party must  
14 return all Protected Material to the Producing Party or destroy such material. As  
15 used in this subdivision, "all Protected Material" includes all copies, abstracts,  
16 compilations, summaries, and any other format reproducing or capturing any of the  
17 Protected Material. Whether the Protected Material is returned or destroyed, the  
18 Receiving Party must submit a written certification to the Producing Party (and, if  
19 not the same person or entity, to the Designating Party) by the 60 day deadline that  
20 (1) identifies (by category, where appropriate) all the Protected Material that was  
21 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
22 copies, abstracts, compilations, summaries or any other format reproducing or  
23 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
24 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
25 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
26 and trial exhibits, expert reports, attorney work product, and consultant and expert  
27 work product, even if such materials contain Protected Material. Any such archival  
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1 copies that contain or constitute Protected Material remain subject to this Protective  
2 Order as set forth in Section 4 (DURATION).

3 **14. ANY VIOLATION OF THIS ORDER MAY BE PUNISHED BY ANY**  
4 **AND ALL APPROPRIATE MEASURES INCLUDING, WITHOUT**  
5 **LIMITATION, CONTEMPT PROCEEDINGS AND/OR MONETARY**  
6 **SANCTIONS.**

7 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

8 Dated: March 18, 2024

**PERKINS COIE LLP**

9 By: 

Jon Daryanani, Bar No. 205149

Jill L. Ripke, Bar No. 309501

*Attorneys for Defendant American  
National Insulation, Inc.*

10 Dated: March 13, 2024

**LAX & STEVENS**

11 By: 

Paul A. Lax, Bar No. 94090

*Attorneys for Plaintiff Carl Killebrew*

12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED:

13 Dated: March 18, 2024

14 / s / Sagar

Honorable Alka Sagar

United States Magistrate Judge

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ (print or type full name), of  
 \_\_\_\_\_ (print or type full address), declare  
 under penalty of perjury that I have read in its entirety and understand the stipulated  
 Protective Order that was issued by the United States District Court for the Central  
 District of California on \_\_\_\_\_ (date) in the case of Carl Killebrew  
 v. Topbuild, Inc.; American National Insulation, Inc.; Coast Insulation; and Does 1  
 through 10, Case No. 23-cv-2427-FWS(ASx). I agree to comply with and to be  
 bound by all the terms of this Stipulated Protective Order and I understand and  
 acknowledge that failure to so comply could expose me to sanctions and  
 punishment in the nature of contempt. I solemnly promise that I will not disclose in  
 any manner any information or item that is subject to this Stipulated Protective  
 Order to any person or entity except in strict compliance with the provisions of this  
 Order. I further agree to submit to the jurisdiction of the United States District  
 Court for the Central District of California for the purpose of enforcing the terms of  
 this Stipulated Protective Order, even if such enforcement proceedings occur after  
 termination of this action. I hereby appoint \_\_\_\_\_  
 (print or type full address and telephone number) as my California agent for service  
 of process in connection with this action or any proceedings related to enforcement  
 of this Stipulated Protective Order.

Dated: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_